



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

September 12, 2012

Mr. Aaron Bateman
Phoenix Management Company
P.O. Box 759
Saco, ME. 04072

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023248
Maine Waste Discharge License (WDL) Application #W006931-5C-G-M
Diamond Cove Homeowners Association & The Inn at Diamond Cove LLC
Final Minor Revision

Dear Mr. Bateman:

Enclosed please find a copy of the **final** Maine MEPDES/WDL **minor revision** which was approved by the Department of Environmental Protection. Please read the permit and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

If you have any questions regarding this matter, please feel free to call me at 287-7693.

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality

Enc. William Johnson, DEP/CMRO
Lori Mitchell, DEP/CMRO
MaryBeth Richardson, DEP/SMRO
Sandy Mojica, USEPA



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

DIAMOND COVE HOMEOWNERS ASSOC &	)	MAINE POLLUTANT DISCHARGE
THE INN AT DIAMOND COVE, LLC	)	ELIMINATION SYSTEM PERMIT
PORTLAND, CUMBERLAND COUNTY, ME.	)	AND
OVERBOARD DISCHARGE	)	
ME0023248	)	WASTE DISCHARGE LICENSE
W006931-5C-H-M	)	MINOR REVISION
APPROVAL	)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et. seq. and *Conditions of licenses*, 38 M.R.S.A. § 414-A and applicable regulations, the Department of Environmental Protection (Department hereinafter) is initiating a minor revision of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0023248/Maine Waste Discharge License (WDL) #W006931-5C-F-R ("permit" hereinafter), issued to the DIAMOND COVE HOMEOWNERS ASSOCIATION AND THE INN AT DIAMOND COVE, LLC ("permittee" hereinafter) on September 15, 2009, and subsequently modified on October 21, 2011. With its supportive data, agency review comments, and other related material on file, the Department finds the following facts:

MODIFICATIONS REQUESTED

On July 10, 2012, a consulting engineering firm representing the permittee submitted a letter to the Department requesting a minor revision of the schedule of compliance in Special Condition K, *Treatment System Repairs and Maintenance*, of MEPDES permit #ME0023248/WDL # W006931-5C-G-M date October 21, 2011. The request is to extend a date of schedule of compliance for the permittee to refurbish the remaining 1,340 linear feet of unrehabilitated sewer collection pipe, replace the perforated manhole cover on Diamond Avenue with a solid cover, replace/raise to grade the manhole casting between Units #83E-B30-3 and #83E-B40-4, and replace/raise to grade the manhole adjacent to Unit #83E-260-26A. More specifically, the permittee is requesting the date of compliance be changed from September 8, 2012, to July 1, 2014, given delays in obtaining the necessary state and local permits to conduct the work, project financing and start of construction due to the delays.

The July 10, 2012, letter along with a July 17, 2012, supporting letter from a law firm representing the permittee requested the Department modify language in Special Condition E, *Unauthorized Discharges*, of MEPDES permit #ME0023248/WDL # 006931-5C-F-R, dated September 15, 2009, to be consistent with other state and local regulatory permits, licenses and local approvals.

MODIFICATIONS GRANTED/DENIED

The Department concurs that a revised schedule of compliance is warranted given the construction start date was delayed by factors outside of the control of the permittee. Therefore, this minor revision modifies the schedule of compliance in Special Condition K, *Treatment System Repairs and Maintenance*, of MEPDES permit # ME0023248/WDL #W006931-5C-G-M issued on October 21, 2011, accordingly.

The Department concurs that the language revision will result in the MEPDES permit be consistent with other state and local regulatory permits, licenses and local approvals. Therefore, Special Condition E has been modified accordingly.

CONCLUSIONS

BASED on the findings on page 1 of this minor revision, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharges, either individually or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharges, either individually or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
 - (c) Where the standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the action to modify language in Special Condition E, *Unauthorized Discharges*, in MEPDES permit #ME0023248/WDL #W006931-5C-F-R, and Special Condition K, *Treatment System Repairs and Maintenance*, in MEPDES permit minor revision #ME0023248/WDL # W006931-5C-G-M issued to the DIAMOND COVE HOMEOWNERS ASSOCIATION AND THE INN AT DIAMOND COVE, LLC on September 15, 2009, and October 21, 2011 respectively, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached to MEPDES permit #ME0023248/WDL # W006931-5C-F-R, issued on September 15, 2009.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0023248/WDL # W006931-5C-F-R, issued on September 15, 2009, and minor revision #ME0023248/WDL # W006931-5C-G-M issued on October 21, 2012, not modified by this permitting action remain in effect and enforceable.
4. This minor revision becomes effective on the date of signature below and expires on September 15, 2014, concurrent with MEPDES permit #ME0023248/ WDL #W006931-5C-F-R, issued on September 15, 2009. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of the this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)].

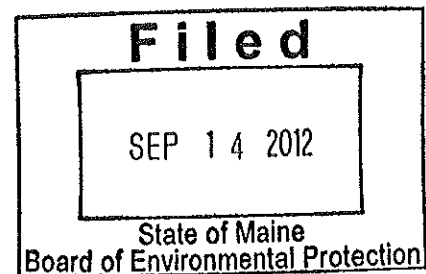
ACTION

PLEASE NOTE ATTACHED FACT SHEET FOR GUIDANCE ON APPEAL PROCEDURES
DONE AND DATED AT AUGUSTA, MAINE, THIS 14th DAY OF September, 2012.
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Heath Keer
For Patricia W. Aho, Commissioner

Date of initiation: July 11, 2012.

Date of acceptance: July 12, 2012.



Date filed with Board of Environmental Protection _____

This order prepared by Gregg Wood, BUREAU OF LAND AND WATER QUALITY

SPECIAL CONDITIONS

E. UNAUTHORIZED DISCHARGES

The permittees are authorized to discharge only in accordance with the terms and conditions of this permit and only from the existing outfall. Discharges of wastewater from any other point source are not authorized under this permit, but must be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

This permit specifically excludes introduction of wastewater directly or indirectly from the redevelopment of the Hospital and the proposed Inn swimming pool. This license authorizes the inclusion of wastewater resulting from the general practice of hotels and inns to have kitchen facilities to support food and beverage services so long as the food and beverage service provided, and the kitchen facilities used, are customary for a residential hotel condominium and such services are provided to, and the kitchen facilities are used to prepare food and beverages solely for, owners of the units at the Inn and the registered guests at the Inn.

K. TREATMENT SYSTEM REPAIRS AND MAINTENANCE

Prior to habitation of the Barracks and final reconnection of the Barracks to the OBD, or by July 1, 2014 [PCS Code 04599], whichever occurs first, the permittee shall refurbish the remaining 1,340 linear feet of unrehabilitated sewer collection pipe, replace the perforated manhole cover on Diamond Avenue with a solid cover, replace/raise to grade the manhole casting between Units #83E-B30-3 and #83E-B40-4, and replace/raise to grade the manhole adjacent to Unit #83E-260-26A.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P. 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
